THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.Nos.3493, 3220, 3320, 3321, 3423 & 3451 of 2007

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% 07.03.2007

Between:

Chigurupalli Prabhakara Rao & others

…Petitioners

and

The Chief Electoral Officer and E.O,
Principal Secretary to Govt, General Administration
(Elections) Department, Govt of A.P., Hyderabad
& others.

…Respondents

! COUNSEL FOR THE PETITIOENRS: MR.P.Govind Reddy,
Mr.Nandigama Krishna Rao.

^ COUNSEL FOR THE RESPONDENTS: G.P. for General Administration,
Mr.C.Jayashree Sarathi
Mr.V.V.Prabhakara Rao

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? CITATIONS:

1. (2003) 8 SCC 498
2. AIR 1985 Supreme Court 1233

3. AIR 1952 Supreme Court 64

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Dated 7th *March 2007*

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COMMON JUDGMENT:

Common questions of fact and law arise for consideration in this batch of writ petitions. Hence, they are disposed of, through common judgment.

The Andhra Pradesh State Legislative Council was revived, in the recent past. Steps were initiated, to elect the members in accordance with the relevant provisions of the Constitution of India; the Representation of People Act 1950 (for short '*1950 Act*'), and that of 1951 (for short '*1951 Act*'). Section 6 of the 1951 Act mandates that a person shall be eligible to be chosen to fill a seat in the Legislative Council, if only he is an elector for any Assembly Constituency in the

State.

The common case of the petitioners is that their names were included in the respective Legislative Assembly Constituencies up to the year 2003 and in the subsequent revisions, their names were deleted. All of them submitted applications to the respective Registering Authorities for inclusion of their names. In some cases, the applications were acted upon and the names of the applicants were included by the Registering Authorities, and in other cases, the petitioners approached this Court, by filing writ petitions. In such cases also, the names came to be included.

All the petitioners intended to file their nominations for being elected in different constituencies of the Legislative Council. The Election Commission of India issued a circular dated 15-02-2007, directing that the voters' lists of the assembly constituencies, published in the year 2006, shall constitute the basis, and directed postponement of the on-going revision of the said lists, for the year 2007. Apprehending that their nominations may not be received, on the ground that their names did not find place in the voters' lists of 2006, in the respective assembly constituencies, the petitioners filed these writ petitions. In some of them, the instructions issued by the Election Commission and the consequential communication issued by the State Election Authority, are challenged, and in some cases, mere declaration, as to their eligibility to file nominations; sought.

Petitioners contend that for no cause attributable to them, their names were deleted in the year 2006, and their applications filed under Section 21 of the 1950 Act were acted upon by the respective Registering Authorities, and that their names came to be included, at the relevant places. They contend that once their names are included, as per the provisions of the 1950 Act, their right to file nominations

cannot be taken away.

The Election Commission of India, and the State Election Commission have filed separate counter affidavits. In some of the matters, the respective Returning Officers have also filed counter affidavits. The gist of their contention is that, the basis for verification of the eligibility of the candidates, is the voters' lists of the year 2006, of any assembly constituency, and the inclusions made after the date of publication of the lists, do not confer any right on the petitioners. It is stated that the applications made by the petitioners are traceable to the on-going revision of the voters' lists of assembly constituencies in the year 2007, and in view of the change of schedule, the final publication would take place only in March, 2007; much subsequent to the last date for filing of nominations for the Legislative Council. They have also raised a preliminary objection, as to the maintainability of the writ petitions, inasmuch as the election process has already been commenced.

Learned counsel for the petitioners urge that the stand taken by the respondents is contrary to the provisions of the Acts 1950 and 1951. They contend that Section 23 of the 1950 Act does not make any reference to publication, in the context of inclusion of names, and that the Act of publication is only ministerial in nature. They placed reliance upon the judgment of the Supreme Court in ***P.T. Rajan v. T.P.M.Sahir and others***[1]. As regards the preliminary objection raised on behalf of the respondents, they submit that the prohibition contained in Article 329 is only against taking any steps, which will have the effect of postponing the elections, and not as to declaration of the right of any individual, to file nominations.

Learned Standing Counsel for the Election Commission and Learned Government Pleader for General Administration Department,

on the other hand, submit that it is only the published voters' lists, that will constitute the basis for deciding the eligibility and not *ad hoc* revisions, which are traceable to the

on-going revisions. Placing reliance upon the judgment of the Supreme Court in ***Lakshmi Charan Sen v. A.K.M.Hassan Uzzaman***[2], learned counsel plead that the election process is a compendious expression, which takes in its fold, even the preparation of the electoral rolls, and after the publication of the election programme, the writ petitions cannot be entertained.

Before discussing the matter on merits, it is necessary to deal with the preliminary objection, raised on behalf of the respondents, as to the maintainability of the writ petitions. Recognizing the importance of elections, either to the House of Parliament, or to the House of the Legislature of the State, the framers of the Constitution intended that the election process must be an uninterrupted one. The disputes, in relation thereto, were required to be resolved, or adjudicated through the mechanisms, provided under appropriate Legislatures, after the conclusion of elections. Specific bar is imposed under Article 329 of the Constitution of India, in the following terms.

> **Article 329: "*Bar to interference by courts in electoral matters*:** [Notwithstanding anything in this Constitution [***]
>
> (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328 shall not be called in question in any court;
>
> (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature".

The purport of this provision was explained by the Supreme Court in the context of the very first general elections, after the advent of Constitution. In ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency***[3], the Supreme Court held as under:

> "Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted".

This principle or restraint was followed throughout, in its letter and spirit.

From a perusal of the paragraph referred to above, it is evident that the Courts, including the High Courts, must not take any step, which may result in retard, or protract the election proceedings, or programme. If the relief claimed by the petitioners is to give rise to such a situation, the mandate contained in Article 329 of the Constitution, gets attracted and the writ petitions are liable to be dismissed.

The relief claimed in the writ petitions is only a declaration to the effect that the petitioners possess the eligibility to file their nominations in the ensuing elections. This relief, in turn, would need interpretation of Sections 21, 22 and 23 of the 1950 Act, in their general terms, without any direct bearing on the election programme, or the conduct of elections. Therefore, the objection raised by the respondents, as to maintainability of writ petitions; cannot be accepted.

The eligibility of the petitioners herein to file the nominations would depend upon the question, as to whether their names figure in the voters' lists of any assembly constituency in the State, as required under Section 6 of 1951 Act. The preparation of voters' lists, or electoral rolls, is dealt with under part 3 of the 1950 Act. Sections 14 to 20 provide for general conditions of eligibility. All the petitioners were included in the respective voters' lists, before the year 2006. Therefore, their eligibility, to be registered as voters, is beyond any doubt. For one reason or the other, their names did not find place in the rolls published in the year 2006. Therefore, it becomes necessary to examine the provisions of Sections 21 to 23, which prescribe the procedure for preparation, and revision of the electoral rolls; the correction of entries, and inclusion of names.

Section 21 mandates that electoral roll for each constituency shall be prepared in the prescribed manner, and the detailed procedure is supplemented through Rules. The electoral roll prepared for the first time, or revised, from time to time; is required to be published in accordance with the Rules made under the Act. One serious doubt is prone to arise, as to whether it is permissible to undertake inclusion, or exclusion of names, in electoral roll, once it is published under Section 21. The reason is that the very process of revision under Section 21 contemplates, publication of a draft roll; receiving of applications for inclusions; general verification by the enumerators, and updating the lists. In the normal course, the publication of the lists, after revision, must acquire finality, till the next revision, under that very provision. In fact, this is the argument advanced on behalf of the respondents. They also state that the revision for the year 2007 is in progress, and the publication of the revision is to take place, after the important steps in the election

to the legislative council are concluded.

General revision of electoral rolls under Section 21 is to take place before general elections or bye-elections, or periodically; as may be directed by the election commission. If Parliament were to have stopped with the stipulation of procedure under Section 21, in the context of preparation and revision of electoral rolls, the view canvassed by the respondents could have gained acceptability. However, two more provisions, that followed Section 21 of that Act, has made all the difference. They read as under:

Sec:21*: Preparation and revision of electoral rolls:*

(1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(2) The said electoral roll--

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—

(i) before each general election to the House of the People or to the Legislative Assembly of a State; and

(ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and

(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:

Provided that subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to

be in force until the completion of the special revision so directed".

Sec.22: *Correction of entries in electoral rolls*. If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency—

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special direction, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him

Sec. 23: ***Inclusion of names in electoral rolls***:

(1) Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.

(2) The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

(3) No amendment, transposition or deletion of any entry shall be made under section 22 and no direction for the

> inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election".

Hardly there exists any doubt, that the correction of entries in the rolls, contemplated under Section 22, and inclusion of names under Section 23, are unrelated to the process of revision of electoral rolls, under Section 21. Three circumstances are provided under Section 22, under which the electoral Registration Officer, can cause necessary corrections, *viz.,* a) noticing of errors or defects in the publishing list, b) necessity to transpose the name of a voter, from one place to another, on account of change of residence within the constituency, or c) death or cessation of a voter to be a resident of the constituency.

The correction under Section 22, or inclusion under Section 23, is not guided by any timings. Any doubt that existed in this regard is clarified through sub-section (3) of Section 23. The courses of action, or steps under these sections are permitted to take place till the last date of making nomination for elections in that constituency. The only period during which such an exercise is prohibited is the last date for making the nomination and completion of that concerned election. It becomes permissible during any other time.

While Section 22 provides either for deletion of names or for re-adjustment of existing ones, Section 23 provides for inclusion of names in electoral rolls. This is to take place on specific application made by the concerned person. The electoral registration officer is required to include the name if he is satisfied that the applicant is entitled to be registered as voter, in that constituency.

In the instant cases, the names of the petitioners were included

on their respective applications, much before the last date for filing nominations.

It is contended on behalf of the respondents that unless an electoral roll is published, it does not become operational and any additions or deletions made thereafter, cannot be taken into account for the purpose of elections. Acceptance of such a contention would virtually render the facility created under Section 23, nugatory. The very purpose of enabling the inclusion of a name of the individual in the electoral roll, till the last date of filing he nominations, is to enable him to take part in the election in the concerned constituency. Further, the publication is required only when the electoral roll is prepared for the first time, or revised under Section 21. The very fact that the Parliament did not provide for publication of the corrections or inclusions under Sections 22 and 23, respectively, indicates that they become enforceable without any publication. Whenever any correction under Section 22 or inclusion under Section 23 takes place, it dates back to the publication of the concerned electoral roll. Therefore, the necessity as to correction or exclusion, once again, does not arise. At any rate, the Supreme Court in ***P.T. Rajam's*** case (1 supra) held that publication of an electoral roll is only a ministerial act. Learned Standing Counsel for the Election Commission has placed reliance upon the judgment of the Supreme Court in AIR 1985 SC 1233[2], and submits that the electoral roll, including corrections, would become operational, only when it is published. The said judgment does not support his contention.

For the foregoing reasons, the writ petitions are allowed.

It is held that such of the petitioners, whose names were included in the electoral rolls of any Assembly Constituency in the State, before the last date of filing of nominations; acquire the eligibility to file

nominations.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.07–03-2007.

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[1] (2003) 8 SCC 498

[2] AIR 1985 Supreme Court 1233

[3] AIR 1952 Supreme Court 64